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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,496	11/14/2003	S. Renee Starnes	16319-07385	1015

758 7590 03/08/2007

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EXAMINER	
BOVEJA, NAMRATA	
ART UNIT	**PAPER NUMBER**
3622	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/714,496	STARNES ET AL.	
	Examiner	Art Unit	
	Namrata Boveja	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 October 2006 and 05 December 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *14 November 2003 and 21 June 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This office action is in response to the RCE filed on 12/05/2006 and the claim amendments and remarks filed on 10/17/2006.

2. Claims 1-27 are presented for examination.

3. Amendments to the claims have been entered and considered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-27 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Berkson Patent Number 6,049,779 (hereinafter Berkson) in view of *Shaio Patent Number 5,299,260 (hereinafter Shaio)* and further in view of Gozdeck et al. Patent Number 6,636,852 (hereinafter Gozdeck).

In reference to claim 1, Berkson teaches a computer implemented method of providing a customer service agent with variable compensation information, wherein the agent earns both fixed compensation and variable compensation for handling customer inquiries, the method comprising: displaying to the agent a current amount of variable compensation (i.e. a bonus) for the agent based on the agent's current performance level in handling customer inquires (col. 3 lines 65 to col. 4 lines 4, col. 4 lines 52-65, col. 7 lines 15-34, col. 8 lines 24-32, col. 10 lines 41-48, and Figure 1); determining a

first *quantitative* performance measure *(i.e. length of time of the call)* (*col. 3 lines 41-55*, col. 6 lines 38-40 and 62-65, *col. 7 lines 49 to col. 8 lines 3,* and col. 9 lines *18-31*), and a second *quantitative* performance measure *(i.e. revenue generated from the call) (col. 3 lines 41-55, col. 6 lines 38-40 and 62-65, col. 7 lines 49 to col. 8 lines 3, and col. 9 lines 18-31)*. Berkson does not teach displaying to the agent a change in the amount of variable compensation based on the change in the first and second percentile ranking associated with the performance measures (i.e. to compare agent performance with the performance of peers) and a graphical user interface to allow the agent to make these changes. *Shaio* teaches using ranking systems to relate a salesperson's *quantitative* performance to the performance of peers, rather than *just* to predetermined standards *(col. 2 lines 3-30, col. 10 lines 16 to col. 11 lines 20, and Figure 4-6),* and it is inherent that this type of a ranking system will use some type of a percentile/scale for the actual calculation of ranks, *since Figure 5 shows the ranks of various agents based on the quantitative performance measures in Figure 4. Shaio* does not teach displaying the ranking on a user interface with controls to interactively change the agent's performance level with respect to the two performance measures. Gozdeck teaches displaying to the agent a graphical user interface adapted to allow the agent to interactively change the agent's performance level, the graphical user interface comprising controls associated with performance measures (col. 2 lines 11-14 and 40-45, col. 5 lines 18-31 and 44-52, col. 6 lines 33-53, col. 8 lines 30-33, and Figure 3); and displaying to the agent a change in the amount of variable compensation based on the change in the agent's performance level (col. 5 lines 44 to col. 6 lines 53, col. 7 lines 47 to col. 8 lines 33, and

Figures 1 and 3). It would have been obvious to modify Berkson to include determining percentile rankings of the agents and display this information in an interactive user interface to enable agents *and managers* to know how *the agents* are performing not just in respect to a benchmark but also against their peers and to enable the agents to track bonus payments more effectively in real time.

5. In reference to claims 2, 11, and 21, Berkson teaches the method, further comprising: determining the agent's current *quantitative* performance level as a function of customer satisfaction measure of the agent's handling of customer inquiries (col. 4 lines 44 to col. 5 lines 16, col. 7 lines 28-34, and col. 8 lines 52 to col. 9 lines 34).

6. In reference to claims 3, 12, and 22, Berkson teaches the method, further comprising: determining the agent's current *quantitative* performance level as a function of the agent's compliance with a work schedule (col. 6 lines 62-67).

7. In reference to claims 4, 13, and 23, Berkson teaches the method, further comprising: determining the agent's current *quantitative* performance level as a function of a number of customer inquires handled per time period (col. 6 lines 38-41 and col. 9 lines 19-34).

8. In reference to claims 5, 14, and 24, Berkson teaches the method, further comprising: determining the agent's current performance level as a function of a measure of customer inquires resolved (i.e. problem solving success rate) by the agent (col. 8 lines 52 to col. 9 lines 12, col. 9 lines 19-34, and col. 11 lines 56 to col. 12 lines 23).

9. In reference to claims 6, 15, and 25, Berkson teaches the method, further comprising: determining the agent's current *quantitative* performance level as a function of a rate of customer inquires transferred by the agent to a customer satisfaction survey system (col. 4 lines 44 to col. 5 lines 16 and col. 8 lines 52 to col. 9 lines 12).

10. In reference to claims 7, 16, and 26, Berkson is silent about the method, further comprising: determining the agent's *second quantitative* performance *measure* in comparison with other agents in a cohort including the agent. *Shaio teaches using ranking systems to relate a salesperson's quantitative performance to the performance of peers, rather than just to predetermined standards (col. 2 lines 3-30, col. 10 lines 16 to col. 11 lines 20, and Figure 4-6).* It would have been obvious to modify Berkson to include determining the agent's performance in comparison with other agents in a cohort including the agent, since it is well known to utilize rankings to determine which agents should be selected to move up on the promotional ladder.

11. In reference to claims 8 and 17, Berkson teaches the method, further comprising: determining a minimum measure of *the first quantitative* performance *measure* for the agent to be eligible for the variable compensation (col. 7 lines 55 to col. 8 lines 8). Berkson is silent about displaying this minimum measure of performance information. Gozdeck teaches displaying a minimum measure of *quantitative* performance information (i.e. quota) (col. 7 lines 49-60 and Figure 3). It would have been obvious to modify Berkson to display a minimum measure of performance for the agent to enable the agent to view this information visually in real time to track performance progressively

and to keep the agent informed about how the agent is doing relative to the minimum performance requirements.

12. In reference to claim 9, Berkson teaches determining a first *quantitative* performance measure *(i.e. length of time of the call)* (*col. 3 lines 41-55*, col. 6 lines 38-40 and 62-65, *col. 7 lines 49 to col. 8 lines 3,* and col. 9 lines *18-31*), and a second *quantitative* performance measure *(i.e. revenue generated from the call) (col. 3 lines 41-55, col. 6 lines 38-40 and 62-65, col. 7 lines 49 to col. 8 lines 3, and col. 9 lines 18-31).* Berkson does not teach displaying a payout grid, comprising a first axis associated with percentile rankings of the first performance measure, and a second axis associated with percentile rankings of the second performance measure a plurality of intersections relative to the axes, each intersection corresponding to a combination of a percentile ranking of the first performance measure and a percentile ranking of the second performance measure and having an variable compensation factor associated with the respective performance measures; responsive to the change in first graphical control that changes the first percentile ranking or a change in the second graphical control that changes the second percentile ranking, indicating in the payout grid the variable compensation factor associated with the changed percentile ranking; and displaying the variable compensation based on the indicated variable compensation factor. Berkson does not teach displaying to the agent a change in the amount of variable compensation based on the change in the first and second percentile ranking associated with the performance measures (i.e. to compare agent performance with the performance of peers) and a graphical user interface to allow the agent to make these changes. *Shaio*

teaches using ranking systems to relate a salesperson's *quantitative* performance to the performance of peers, rather than *just* to predetermined standards *(col. 2 lines 3-30, col. 10 lines 16 to col. 11 lines 20, and Figure 4-6),* and it is inherent that this type of a ranking system will use some type of a percentile/scale for the actual calculation of ranks, *since Figure 5 shows the ranks of various agents based on the quantitative performance measures in Figure 4. Shaio* does not teach displaying the ranking on a user interface with controls to interactively change the agent's performance level with respect to the two performance measures and displaying the variable compensation based on the indicated variable compensation factor. Gozdeck teaches displaying to the agent a graphical user interface adapted to allow the agent to interactively change the agent's performance level, the graphical user interface comprising controls associated with performance measures (col. 2 lines 11-14 and 40-45, col. 5 lines 18-31 and 44-52, col. 6 lines 33-53, col. 8 lines 30-33, and Figure 3); and displaying to the agent a change in the amount of variable compensation based on the change in the agent's performance level (col. 5 lines 44 to col. 6 lines 53, col. 7 lines 47 to col. 8 lines 33, and Figures 1 and 3). It would have been obvious to modify Berkson to include determining percentile rankings of the agents and display this information in an interactive user interface to enable agents *and managers* to know how *the agents* are performing not just in respect to a benchmark but also against their peers and to enable the agents to track bonus payments more effectively in real time.

13. In reference to claim 10, Berkson teaches determining a first *quantitative* performance measure *(i.e. length of time of the call)* (*col. 3 lines 41-55*, col. 6 lines 38-

40 and 62-65, *col. 7 lines 49 to col. 8 lines 3,* and col. 9 lines *18-31*), and a second *quantitative* performance measure *(i.e. revenue generated from the call) (col. 3 lines 41-55, col. 6 lines 38-40 and 62-65, col. 7 lines 49 to col. 8 lines 3, and col. 9 lines 18-31).* Berkson does not teach a user interface with a display window for displaying percentile rankings of the first performance measure and percentile rankings of the second performance measure that allows the agent to change the first percentile ranking using a first graphical control and a second graphical control that changes the second percentile ranking, wherein the variable compensation amount is automatically adjusted in response to changes in the first or the second performance percentile rankings. *Shaio* teaches using ranking systems to relate a salesperson's *quantitative* performance to the performance of peers, rather than *just* to predetermined standards *(col. 2 lines 3-30, col. 10 lines 16 to col. 11 lines 20, and Figure 4-6),* and it is inherent that this type of a ranking system will use some type of a percentile/scale for the actual calculation of ranks, *since Figure 5 shows the ranks of various agents based on the quantitative performance measures in Figure 4. Shaio* does not teach displaying the ranking on a user interface with controls to interactively change the agent's performance level with respect to the two performance measures and displaying the variable compensation based on the indicated variable compensation factor. Gozdeck teaches displaying to the agent a graphical user interface adapted to allow the agent to interactively change the agent's performance level, the graphical user interface comprising controls associated with performance measures (col. 2 lines 11-14 and 40-45, col. 5 lines 18-31 and 44-52, col. 6 lines 33-53, col. 8 lines 30-33, and Figure 3); and automatically

displaying to the agent a change in the amount of variable compensation based on the change in the agent's performance level (col. 5 lines 44 to col. 6 lines 53, col. 7 lines 47 to col. 8 lines 33, and Figures 1 and 3). It would have been obvious to modify Berkson to include determining percentile rankings of the agents and display this information in an interactive user interface to enable agents *and managers* to know how *the agents* are performing not just in respect to a benchmark but also against their peers and to enable the agents to track bonus payments more effectively in real time.

14. In reference to claim 18, Berkson teaches determining a first *quantitative* performance measure *(i.e. length of time of the call)* (*col. 3 lines 41-55*, col. 6 lines 38-40 and 62-65, *col. 7 lines 49 to col. 8 lines 3,* and col. 9 lines *18-31*), and a second *quantitative* performance measure, which is a measure of resolved customer inquiries *(i.e. revenue generated from the call) (col. 3 lines 41-55, col. 6 lines 38-40 and 62-65, col. 7 lines 49 to col. 8 lines 3, and col. 9 lines 18-31).* Berkson does not teach a user interface with a display window further comprising a payout grid, comprising a plurality of intersections, each intersection corresponding to a combination of a first percentile ranking of a rate or handling customer inquiries and a second percentile ranking of a measure of resolved inquiries, and associated with a variable payout factor, wherein the variable payout factor is used to automatically adjust the variable compensation amount. *Shaio* teaches using ranking systems to relate a salesperson's *quantitative* performance to the performance of peers, rather than *just* to predetermined standards *(col. 2 lines 3-30, col. 10 lines 16 to col. 11 lines 20, and Figure 4-6),* and it is inherent that this type of a ranking system will use some type of a percentile/scale for the actual

calculation of ranks, *since Figure 5 shows the ranks of various agents based on the quantitative performance measures in Figure 4. Shaio* does not teach displaying the ranking on a user interface with controls to interactively change the agent's performance level with respect to the two performance measures and displaying the variable compensation based on the indicated variable compensation factor. Gozdeck teaches displaying to the agent a graphical user interface adapted to allow the agent to interactively change the agent's performance level, the graphical user interface comprising controls associated with performance measures (col. 2 lines 11-14 and 40-45, col. 5 lines 18-31 and 44-52, col. 6 lines 33-53, col. 8 lines 30-33, and Figure 3); and automatically displaying to the agent a change in the amount of variable compensation based on the change in the agent's performance level (col. 5 lines 44 to col. 6 lines 53, col. 7 lines 47 to col. 8 lines 33, and Figures 1 and 3). It would have been obvious to modify Berkson to include determining percentile rankings of the agents and display this information in an interactive user interface to enable agents *and managers* to know how *the agents* are performing not just in respect to a benchmark but also against their peers and to enable the agents to track bonus payments more effectively in real time.

15. In reference to claim 19, Berkson teaches a computer implemented system for determining variable compensation for call center agents (col. 2 lines 45-54), the system comprising: a telephone system including telephones to allow call center agents to provide help to customers over the telephones (col. 7 lines 35-48) and a workstation adapted for monitoring the call center agents' use of the telephones (col. 7 lines 42-54), the monitor collecting data including when the call center agents are logged on to the

telephone system (i.e. tracking amount of time agent has worked) (col. 6 lines 62-67), how many calls the call center agents receive (col. 6 lines 38-41 and col. 9 lines 19-34) , and whether the calls the call center agents receive are transferred by the call center agents to a customer feedback system (col. 4 lines 44 to col. 5 lines 16 and col. 8 lines 52 to col. 9 lines 12); a customer feedback system for receiving calls transferred by call center agents, and determining from the customers on the received calls a satisfaction level of the customers (col. 4 lines 26-65, col. 8 lines52 to col. 9 lines 12, and col. 11 lines 56 to col. 12 lines 23); a call database connected to the telephone system for receiving and storing data indicative of how many calls the call center agents receive and whether the calls the call center agents receive are transferred by the call center agents (col. 6 lines 31-49, col. 7 lines 42-54, and col. 9 lines 4-12); a schedule database connected to the telephone system for receiving and storing data indicative of when the call center agents are logged on to the telephone system (i.e. tracking amount of time agent has worked, so this information must be stored in some type of a database) (col. 6 lines 62-67); a feedback database connected to the customer feedback system for receiving and storing data indicative of whether customers' inquiries were resolved and the overall satisfaction of the customers for each call center agent (col. 7 lines 42-54, col. 8 lines 52 to col. 9 lines 12, and col. 11 lines 65 to col. 12 lines 4); a processor for receiving information from the call database, the schedule database, and the feedback database and, based on the received information, calculating variable compensation (i.e. are "winnings" associated with playing games) for each call center agent (col. 3 lines 49-55, col. 4 lines 49-65, col. 6 lines 13-19, col. 8 lines 66 to col. 9 lines 4, and col.

10 lines 41-48). Berkson does not teach a calculating a variable compensation based on percentile rankings and a user interface with a display window for displaying percentile rankings of the first *quantitative* performance measure and percentile rankings of the second *quantitative* performance measure that allows the agent to change the first percentile ranking using a first graphical control and a second graphical control that changes the second percentile ranking, wherein the variable compensation amount is automatically adjusted in response to changes in the first or the second performance percentile rankings. *Shaio* teaches using ranking systems to relate a salesperson's *quantitative* performance to the performance of peers, rather than *just* to predetermined standards *(col. 2 lines 3-30, col. 10 lines 16 to col. 11 lines 20, and Figure 4-6),* and it is inherent that this type of a ranking system will use some type of a percentile/scale for the actual calculation of ranks, *since Figure 5 shows the ranks of various agents based on the quantitative performance measures in Figure 4. Shaio* does not teach displaying the ranking on a user interface with controls to interactively change the agent's performance level with respect to the two performance measures and displaying the variable compensation based on the indicated variable compensation factor. Gozdeck teaches displaying to the agent a graphical user interface adapted to allow the agent to interactively change the agent's performance level, the graphical user interface comprising controls associated with performance measures (col. 2 lines 11-14 and 40-45, col. 5 lines 18-31 and 44-52, col. 6 lines 33-53, col. 8 lines 30-33, and Figure 3); and automatically displaying to the agent a change in the amount of variable compensation based on the change in the agent's performance level (col. 5 lines 44 to

col. 6 lines 53, col. 7 lines 47 to col. 8 lines 33, and Figures 1 and 3). It would have been obvious to modify Berkson to include determining percentile rankings of the agents and display this information in an interactive user interface automatically to enable agents *and managers* to know how *the agents* are performing not just in respect to a benchmark but also against their peers and to enable the agents to track bonus payments more effectively in real time.

16. In reference to claim 20, Berkson teaches a computer implemented method for determining variable compensation for a call center agent (col. 2 lines 39 to col. 3 lines 12), the method comprising: collecting information on the number of customer support telephone calls received (i.e. completed) by the call center agent (col. 6 lines 38-41 and col. 9 lines 19-34); collecting information on the times that the call center agent works (col. 6 lines 62-67); collecting customer satisfaction information of customers handled by the call center agent (col. 4 lines 44-65, col. 7 lines 28-34, and col. 9 lines 13-34); calculating, based on the collected information and in response to a received command, a variable compensation amount for the call center agent (col. 3 lines 65 to col. 4 lines 4, col. 4 lines 52-65, col. 7 lines 15-34, col. 8 lines 24-32, col. 10 lines 41-48, and Figure 1); and displaying the calculated variable compensation (i.e. variable compensation includes prizes earned in games and bonus points rewarded by supervisors and customers, since all of these rewards are based on the performance of the agent during a given call, and this compensation information is either displayed on the computer screen of the agent immediately after playing a game or is tracked in the prize pool bank) amount to allow the call center agent to determine the variable compensation

(col. 3 lines 65 to col. 4 lines 4, col. 4 lines 52-65, col. 7 lines 15-34, col. 8 lines 24-32, col. 10 lines 41-48, and Figure 1). Berkson does not teach receiving from the call center agent a change to at least on of: a first percentile ranking of the agent's performance with respect to a first *quantitative* performance measure related to the agent's rate handling customer inquires; a second percentile ranking of the agent's performance with respect to a second *quantitative* performance measure related to a measure of customer inquiries resolved by the agent; and calculating and displaying a variable compensation for the agent based on the received change. *Shaio* teaches using ranking systems to relate a salesperson's *quantitative* performance to the performance of peers, rather than *just* to predetermined standards *(col. 2 lines 3-30, col. 10 lines 16 to col. 11 lines 20, and Figure 4-6),* and it is inherent that this type of a ranking system will use some type of a percentile/scale for the actual calculation of ranks, *since Figure 5 shows the ranks of various agents based on the quantitative performance measures in Figure 4. Shaio* does not teach displaying the ranking on a user interface with controls to interactively change the agent's performance level with respect to the two performance measures and displaying the variable compensation based on the indicated variable compensation factor. Gozdeck teaches displaying to the agent a graphical user interface adapted to allow the agent to interactively change the agent's performance level, the graphical user interface comprising controls associated with performance measures (col. 2 lines 11-14 and 40-45, col. 5 lines 18-31 and 44-52, col. 6 lines 33-53, col. 8 lines 30-33, and Figure 3); and automatically displaying to the agent a change in the amount of variable compensation based on the

change in the agent's performance level (col. 5 lines 44 to col. 6 lines 53, col. 7 lines 47 to col. 8 lines 33, and Figures 1 and 3). It would have been obvious to modify Berkson to include determining percentile rankings of the agents and display this information in an interactive user interface automatically to enable agents *and managers* to know how *the agents* are performing not just in respect to a benchmark but also against their peers and to enable the agents to track bonus payments more effectively in real time.

17. In reference to claim 27, Berkson teaches the method wherein the first performance measure is a rate of handling customer inquiries (i.e. quantitative measure, calls answered per hour) (*col. 3 lines 41-55*, col. 6 lines 38-40 and 62-65, *col. 7 lines 49 to col. 8 lines 3,* and col. 9 lines *18-31*), and a second performance measure, which is a measure of resolved customer inquiries *(i.e. problem solving success rate) (col. 9 lines 18-34).*

Response to Arguments

18. After careful review of Applicant's amendments and arguments filed on 10/17/2006, the Applicant's amendments and arguments with respect to claims 1-27 have been fully considered but are moot in view of the new ground(s) of rejection. Amendments to the claims have been entered and considered.

19. Applicant has successfully addressed the previously made objections.

20. Applicant argues that "modifying Berkson in view of Gozdeck would destroy the latter's principle of operation. There would be no need for Berkson to provide "games" as incentives, if the agent could directly see the changes in their compensation – and hence be really motivated by financial gain, not superficially motivated by Berkson's

"video games."" First of all the games don't provide superficial motivation, since there are actual prizes the winners of the game can receive. Second of all even if the agent can see his performance in real time, a game can motivate the agent to do even better in terms of performance since a game is interactive than just by viewing a graphic of the agent's performance. So, it is unclear what the Applicant is trying to argue here.

21. Applicant states that the Berkson reference is not about measurement at all. This is inaccurate, since Berkson is about performance measurement, simply put, the agent that performs can get to play a game. An agent who doesn't perform may not get to play a game in an embodiment. So, it is unclear what the Applicant is trying to say here. Just because Berkson uses video games and prizes as rewards for performance doesn't mean that Berkson is not about performance measurement.

22. Applicant argued the motivation to combine reference with the previously used SBR reference, since that reference is no longer used in this rejection, the Examiner wants to just point out the following in regards to motivation to the Applicant in anticipation of any similar concerns the Applicant may have with reference to the introduction of the new reference. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Therefore, the motivation does not have to be in one of the references and can rather come from

knowledge generally available to one of ordinary skill in the art.

23. Applicants additional remarks addressed to the new claim limitations have been addressed in the rejection necessitated by the amendments.

Conclusion

24. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure include the following.

a) Kansal Publication Number US2002/0055900 A1. Teaches a system and method of assessing and rating vendor risk and pricing of technology delivery insurance. Also see Figure 8 Office Analysis comparison charts.

b) Small Business Report. "Evaluating the Sales Force, Measuring Sales Efforts and Results. June 1987. Page 44.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Namrata (Pinky) Boveja whose telephone number is 571-272-8105. The Examiner can normally be reached on Mon-Fri, 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The CENTRAL FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 1866-217-9197 (toll-free).

NB

March 4th, 2007

RETTA YEHDEGA
PRIMARY EXAMINER